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Supreme Court of the United States.

IN ADMIRALTY.

The New York & Baltimore Transportation
Company

vs.

Philadelphia & Savannah Steam Navigation
Company,

(The Owners of the Steamship "Keystone State.")

BRIEF OF APPELLEES.

King & Baird, Printers, No. 607 Sansom St., Philadelphia.

In the Supreme Court of the United States.

IN ADMIRALTY.

December Term, 1859. No. 170.

THE NEW YORK & BALTIMORE TRANSPORTATION Co.,
APPELLANTS,

vs.

THE PHILADELPHIA & SAVANNAH STEAM NAVIGATION Co.,
(Owners of the Steamship "Keystone State.")

Appeal from the Circuit Court of the United States, for
the Eastern District of Pennsylvania.

Brief of the Appellees.

This case was commenced by a libel, exhibited in the District Court of the United States, for the Eastern District of Pennsylvania, in which the New York & Baltimore Transportation Company, the appellants, were libellants, and the Philadelphia & Savannah Steam Navigation Company intervening as the owners of the Keystone State, were respondents.

The collision complained of occurred in the Delaware river, between the steamship the Keystone State, and a barge, the A. Groves, Jr., owned by the libellants.

The steamship the Keystone State, was a vessel of the burthen of fifteen hundred tons, carrying freight and passengers, and was at the time of the collision, well equipped and manned, having all her lights displayed, a proper lookout, and in charge of a branch pilot, duly licensed and qualified to conduct and manage ships in the Delaware river; and was proceeding in the course of a voyage up the Delaware river, to Philadelphia, in her usual manner, and at a rate of speed of about nine or ten miles an hour.

The barge, the A. Groves, Jr., was a vessel of one hundred and twenty tons burthen, and was at the time of the collision, in tow of a propeller, the Artisan, a vessel of about 122 tons, owned also by the libellants, and was attached to the propeller by a hawser, of the length of about one hundred and eighty feet. The propeller was proceeding down the Delaware river, having the barge in tow, and at the rate of seven or eight miles an hour.

The collision occurred near the middle of the ship channel, an hour after midnight, and near the Marcus Hook bar, and about twenty miles below the Port of Philadelphia.

The barge was alleged by the libellants to have been laden with a cargo of the value of seventy thousand dollars, and that the libellants were carrying the same as common carriers; that they sustained loss on freights, and advanced charges, five hundred dollars, and on goods and merchandise, thirty-five thousand dollars, and by damage to the barge, two thousand five hundred dollars; in all thirty-eight thousand dollars.

The case was heard at length by the District Judge (Judge Kane), and the libel dismissed. It was also fully heard on appeal by the Circuit Judge and the decree affirmed. From the latter decree this appeal was taken.

Points of fact averred by Appellees.

1. Independently of all regulations, and of the rules of the maritime law, the usage of the river requires that approaching steamers shall port their helms and keep to the right in passing.

Deering, Lib. T., rec. 26 and 27.

Dougherty, Res. T., rec. 37.

Bennet, R. T., rec. 39.

Murphy, R. T., rec. 42 and page 43.

Ashton, R. T., rec. 44.

2. The vessels, steamer and propeller, with her tow,

were, when first seen by each other, in or near the middle of the ship-channel, and the channel was of the width of three-quarters of a mile—the river from shore to shore was wholly unobstructed, and no reason of any character is suggested which should have caused a deviation on the part of the propeller from the law and usage which required the steamers to port their helms and pass larboard to larboard.

Cundiff, L. T., rec. 15; id. rec. 19.

Dearing, L. T., rec. 26.

Foster, L. T., rec. 24.

Bennet, R. T., rec. 39.

Murphy, R. T., rec. 42.

3. The propeller from the time the lights were first discovered, was duly reported by the lookout, and for the distance of two or three miles, was kept constantly and attentively in view by the pilot of the steamship. The helm of the steamship was ported and the lights of the propeller kept a point or a point and a half on the larboard bow; when in close proximity, a wrongful change of direction on the part of those having charge of the propeller, by starboarding her helm, instead of porting it as they should have done, ran her across the bows of the steamer and caused the collision of the barge with the steamship.

Bennet, R. T., rec. 39. Murphy, id., rec. 42. Ashton, id., pages 43 and 44.

4. Those on board the Propeller, appear to have had no look-out; utterly disregarded the lights of the steamer which clearly indicated her direction; made no change of course of any kind until the collision was imminent, and then the wrongful movement above referred to.

Caudiff, L. T., rec. 15 and 16.

Moore, L. T., rec. 20.

Bennett, R. T., rec. 39.

Bradley, R. T., rec. 52.

Jouy, L. T., rec. 27.

Fortner, L. T., rec. 27 and 28.

5. The Pilot of the Steamship on perceiving this wrongful movement, which brought both vessels in peril, ordered the helm hard-a-port and the steamship to be slowed and stopped, which orders were instantly complied with, and the steamship was almost, if not entirely at rest, at the time of the collision.

The effect of these orders, which were prudent and necessary, was to enable the propeller to go clear, but she, being still under full headway, brought the barge in contact with the steamship.

Bennet, R. T. rec. 39; Murphy, id. rec. 42; Ashton, id. rec. 44; Griffith, id. rec. 45; Marshman, id. rec. 47; Fortner, L. T. rec. 28.

6. No timely precaution of any kind was used by the propeller to avert the collision: Bennett, R. T. rec. 39; Murphy, id. rec. 42; Fortner, L. T. rec. 28, and Cundiff, id. rec. 16.

7. The steamship was proceeding up the river at a lower rate of speed than upon other parts of her voyage and cautiously, with pilot and lookout. Dougherty, R. T. rec. 38; Murphy, id. rec. 42 and rec. 43; Bennet, id. rec. 39; Griffith, id. rec. 45.

8. The barge was attached to the propeller by a hawser, dragging behind her in a direct line, at the distance of 180 feet in such manner that it was impossible for the pilot of the steamship to see the barge until the moment of collision. Cundiff, L. T. rec. 14; Deering, id. rec. 26; Bennet, R. T. rec. 40; Murphy, id. rec. 43; Dougherty, id. rec. 38.

9. If the barge had been attached to the propeller's side, or near her or under her control, the collision would not have occurred, the propeller passing fully clear of the steamer, with a space of fifty feet intervening. Marshman, R. T. rec. 46; Murphy, id. rec. 43; Bennet, id. rec. 39.

10. If the propeller had ported her helm, as required by law and the usage of the river, or had even slowed her speed, her tow would have cleared the steamship, and the fact that those on the propeller saw the red and white light of the steamer *only*, clearly exhibited the necessity for such movements; it necessarily follows that when the bright and red light only are seen, the larboard side of the vessel is in view. Fortner, L. T. rec. 27; Jouy, L. T. rec. 27. Bradley, rec. 52; Moore, rec. 21.

11. When those on board the propeller first saw the steamer, the propeller was above the buoy on the lower end of Marcus Hook. The channel below that point, being on the western or Pennsylvania side of the river, gave to the steamship coming up the middle of the channel the appearance of being toward the Pennsylvania side. This may account for the erroneous statement of some of the libellant's witnesses, that the steamer was on the Pennsylvania side and not in the mid-channel.

Map Coast Survey.

Dougherty, R. T. rec. 37.

Cundiff, L. T. rec. 14.

12. The Captain of the propeller states that she had the Christine light *a little* on her starboard bow, but before the collision, and before his wrongful order to starboard, the captain also says,—we were near *the middle of the river, steaming down*. See Cundiff, L. T. p. 15 and 19. The latter statement must be taken as correct, especially in view of the respondent's evidence; Bennet, R. T. p. 39, Murphy, 42, Dougherty, 37. In any event it would not be inconsistent with the fact that the steamer was in the middle of the channel.

Points of Law relied on by Appellees.

1. The Act of Congress of 1852, 10 Statutes at Large, 61-72, and the rules of the Supervising Inspectors appointed under the same, were applicable to the Keystone State, as a passenger steamer, and to the Propeller also, if carrying passengers, as set forth in the libel, so far as respects lights and movements.

2. The admiralty rules are imperative—they are obligatory upon vessels approaching each other from the time the necessity for precaution begins, and continue so long as they advance. *N. Y. & L. U. S. S. Co. v. Rumball*, 21 Howard, 383.

3. The rule laid down is that when two steam vessels are approaching each other, each shall port, and go to the right, passing each other larboard and larboard.

This rule is imperative in English Courts of Admiralty, and fully adopted by the United States Courts. *The Duke of Sussex*, 1 Wm. Rob. 285; *The Gazelle*, 1 Wm. Rob. 471; *The James Watt*, 2 Wm. Robinson, page 271; *St. John et al. v. Paine*, 10 Howard, 558; *Origin et al. v. The Rocca*, 18 Howard, 572; *Wheeler v. The Steamer Eastern State*, 2 Curtis, p. 142.

4. A propeller, whether carrying passengers or engaged and used only for towing, and when having a tow in charge is still a steamer, subject to all the general rules applicable to steamers; and the rule of law makes no such distinction as would require them to be considered with respect to other steamers as sailing vessels; on the contrary, a steamer with a tow in charge is bound to adopt the same rules with regard to a sailing vessel as a passenger steamer—no distinction is recognized between them. *Steamer New York v.*

Rea, 18 Howard, 223. They are required also to have a look-out, charged specially with the duty. Chamberlain v. Ward, 21 Howard, 571.

5. It was the duty of the propellor to have a competent and vigilant lookout stationed at the forward part of the steamer, in the position best adapted to descry vessels, at the earliest movement, actually and vigilantly employed in the performance of that duty.

St. John v. Paine, 10 How., 557.

Chamberlain v. Ward, 21 How., 548.

The James Gray v. The John Frazer, 21 How., 192.

6. No such condition of things existed at the time and place of the collision as required the speed of the steamer to be reduced more than that stated in the evidence. The distance from the port of Philadelphia was 20 miles and there were no vessels at anchor, or otherwise to interfere with the full use of the whole channel.

Steamer New York v. Rea, 18 Howard, 223; Culbertson v. Shaw, 18 Howard, 584; The James Gray v. The John Frazer, 21 Howard, 185.

7. The 5th Rule of the Supervising Inspectors adopted October 29th, 1852, is cited in Appellant's Brief as providing, "that it shall not be lawful for an ascending boat to cross a channel when a descending boat is so near that it would be possible for a collision to ensue therefrom." This rule (the appellants aver) was violated by the steamer. The rule cited refers exclusively to boats navigating the "rivers falling into the Gulf of Mexico and its tributaries."

P. McCALL,
ST. GEO. T. CAMPBELL,
CHARLES S. KEYSER,
For Appellees.

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